

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DAYLIGHT TRANSPORT, LLC
Employer

and

Case 31-RC-262633

TEAMSTERS LOCAL 63
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review. The Employer's Request for Immediate Stay of the Mail Ballot Distribution is denied as moot.¹

JOHN F. RING, CHAIRMAN

MARVIN E. KAPLAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

Dated, Washington, D.C., August 19, 2020.

¹ In denying review, we note that the Board's decision in *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998), recognizes that Board elections should, as a general rule, be conducted manually and specifies well-settled guidelines for determining whether a mail-ballot election would normally be appropriate. We agree with the Regional Director that, under normal circumstances, this would almost certainly not be an election where a mail ballot would be considered. But in *San Diego Gas & Electric*, the Board also recognized that "there may be other relevant factors that the Regional Director may consider in making this decision" and that "extraordinary circumstances" could permit a Regional Director to exercise his or her discretion outside of the guidelines set forth in that decision. *Id.*

In finding that a mail-ballot election is warranted in this case, we rely on the extraordinary circumstances resulting from the Covid-19 pandemic. The Board will continue considering whether manual elections should be directed based on the circumstances then prevailing in the Region charged with conducting the election, including the applicability to such a determination of the suggested protocols set forth in GC Memorandum 20-10. Under the circumstances presented in this case, however, we are satisfied that the Regional Director did not abuse her discretion in ordering a mail-ballot election here.

Additionally, we note that the Employer's request for review raises concerns about potential disenfranchisement of voters. While such concerns could be relevant to whether a mail-ballot election is appropriate, the circumstances presented here fail to establish that the Regional Director abused her discretion. Any party is free to present evidence of any actual disenfranchisement of voters, if applicable, in post-election objections.

The Board is open to addressing the normal criteria for mail balloting in a future appropriate proceeding.